

Letter of Findings Number: 01-20130608
Income Tax
For Tax Years 2010

NOTICE: [IC 6-8.1-3-3.5](#) and [IC 4-22-7-7](#) require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

ISSUES

I. Adjusted Gross Income Tax – Liability.

Authority: [IC 6-3-2-1](#); [IC 6-3-1-3.5\(a\)](#); [IC 6-8.1-5-1\(c\)](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayers protest the imposition of individual income tax on settlement proceeds.

II. Tax Administration – Penalty.

Authority: [IC 6-8.1-10-2.1](#); [45 IAC 15-11-2](#).

Taxpayers protest the imposition of ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayers, also referred to as Husband or Wife, are individuals. Taxpayers moved to Indiana in April 2010. In December 2010, Husband received settlement proceeds from a lawsuit concerning his employment while he was a resident of Florida ("settlement proceeds"). Taxpayers did not include the settlement proceeds as income on their Indiana individual income tax return. The Indiana Department of Revenue ("Department") issued a proposed assessment for Indiana individual income taxes based on the inclusion of the settlement proceeds.

Taxpayers protested the Department's proposed assessment and ten percent negligence penalty. An administrative hearing was held, and this Letter of Findings results. Further facts will be provided as necessary.

I. Adjusted Gross Income Tax – Liability.

DISCUSSION

Taxpayers protest the Department's inclusion of the settlement proceeds as income subject to Indiana's individual income tax.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and the taxpayer bears the burden of proving that any assessment is incorrect. [IC 6-8.1-5-1\(c\)](#); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

[IC 6-3-2-1](#) states that "[e]ach taxable year, a tax at the following rate of adjusted gross income is imposed upon the adjusted gross income of every resident person" (Emphasis added). For individuals, Indiana defines the term adjusted gross income "as [it is] defined in Section 62 of the Internal Revenue Code" with Indiana-specific modifications. [IC 6-3-1-3.5\(a\)](#). The statute does not provide a modification of the federal adjusted gross income for settlement proceeds, or more specifically for settlement proceeds from lawsuits concerning employment outside of Indiana. [IC 6-3-1-3.5\(a\)](#) (as in effect tax year 2010).

In this case, Taxpayers became residents of Indiana in April 2010. Husband received the settlement proceeds in December 2010. At the time Husband received the settlement proceeds, Taxpayers were residents of Indiana. Their 2010 Indiana adjusted gross income was subject to Indiana's individual income tax. The settlement proceeds were included in Taxpayers' 2010 federal adjusted gross income, and there is no statutory modification in [IC 6-3-1-3.5\(a\)](#) (as in effect tax year 2010) fitting the Taxpayers' situation. The settlement proceeds were income for Indiana individual income tax purposes for the tax year 2010, and Taxpayers' protest is respectfully denied.

FINDING

Taxpayers' protest is respectfully denied.

II. Tax Administration – Penalty.

DISCUSSION

The Department assessed a ten percent negligence penalty for tax year 2010. Taxpayer protests the imposition of the penalty. The Department will determine whether the penalty imposed shall be waived.

A taxpayer who "incurs, upon examination by the department, a deficiency that is due to negligence . . . is subject to a penalty." [IC 6-8.1-10-2.1\(a\)](#). The Department shall waive the penalty if the taxpayer demonstrates that the failure to pay the outstanding taxes "was due to reasonable cause and not due to willful neglect." [IC 6-8.1-10-2.1\(d\)](#); see also [45 IAC 15-11-2](#). The taxpayer may demonstrate reasonable cause demonstrating that it used "ordinary business care and prudence" in failing to pay the outstanding taxes. Whether a taxpayer demonstrates reasonable cause for penalty purposes is a fact-sensitive question and determined on a case-by-case basis. [45 IAC 15-11-2\(b\)](#) and (c).

In this case, Taxpayers have demonstrated that they had a reasonable cause for their failure to pay the proper amount of individual income taxes in 2010. The penalty shall be waived.

FINDING

Taxpayers' protest is sustained.

SUMMARY

Taxpayers' protest is respectfully denied regarding the assessment of tax and sustained regarding the imposition of a ten percent negligence penalty.

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